D.T.E. 00-100

Petition of Boston Gas Company, Colonial Gas Company, and Essex Gas Company for Approval to participate in a Utility Money Pool Agreement under Massachusetts General Laws, Chapter 164, § 17A.

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FOR: Boston Gas Company, Colonial Gas Company

and Essex Gas Company d/b/a KeySpan Energy Delivery

New England

Petitioners

I. INTRODUCTION

On November 3, 2000, Boston Gas Company, Colonial Gas Company and Essex Gas Company (collectively, "Companies" or "Petitioners") filed a petition with the Department of Telecommunications and Energy ("Department"), pursuant to G.L. c. 164, § 17A, requesting approval to participate in a Utility Money Pool Agreement ("Money Pool Agreement") with their affiliates KeySpan Corporation ("KeySpan Corporation"), KeySpan Corporate Services, LLC ("KeySpan Services"), The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York ("Brooklyn Union"), KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("KeySpan Gas"), KeySpan Generation, LLC ("KeySpan Generation") (collectively, "the KeySpan Companies"), and EnergyNorth Natural Gas, Inc. ("EnergyNorth").[1]

On November 4, 1999, Eastern Enterprises, the parent company of the Petitioners, executed an agreement of merger with KeySpan Corporation (Exh. KeySpan-1, at 1). As a result of the merger, the Companies are wholly-owned subsidiaries of KeySpan Corporation, with Eastern Enterprises remaining as an intermediate holding company (Tr. at 12-13).

Pursuant to notice duly issued, public and evidentiary hearings were held at the offices of the Department on January 30, 2001. No petitions for leave to intervene were filed. In support of the petition, the Companies sponsored the testimony of Jean A. Scholtens, Vice President of Finance and Rates for KeySpan Energy Delivery New England.[(2)] The evidentiary record consists of 14 exhibits and four responses to record requests.

II. THE COMPANIES' PROPOSAL

The Companies have requested authorization to participate in the Money Pool Agreement with the regulated operations of KeySpan, including Brooklyn Union, KeySpan Gas, KeySpan Generation, EnergyNorth, and the Petitioners (Exh. KeySpan-1, at 1; RR-DTE-3; RR-DTE-4; Tr. at 7, 9). The Companies stated that the money pool will primarily be used as a source of working capital and fuel inventory financing (Tr. at 8). The overall objective of the money pool is to meet the short term borrowing requirements of the pool participants in a manner that pools the resources of the participants to achieve a lower cost of borrowing (Exh. KeySpan-2 [revised], at 2).

The Companies explained that KeySpan Corporation's role is to ensure that there are funds in the money pool, obtained from the lowest possible cost source, to meet the borrowing requirements of the money pool participants (id. at 3; Exh. DTE 1-1). To effect the money pool, KeySpan Corporation has entered into a $1.5 billion commercial paper program, of which $700 million has been allocated to the money pool (Tr. at 9). KeySpan Corporation will lend the proceeds to the money pool as required, with KeySpan Services acting as the money pool's administrator (Exh. KeySpan-2 [revised] at 2; Tr. at 6).

In order to take advantage of the money pool, the pool participants will determine their cash needs on a daily basis (Exh. KeySpan-2 [revised], at 3). Surplus cash will be loaned to the money pool and each participant's borrowing needs will be determined (id.). Surplus funds will be loaned to a participant requiring the use of such funds (id.). To the extent surplus funds are inadequate to meet the borrowing needs of the pool participants, KeySpan Corporation will rely on its $700 million commercial paper program (Exh. KeySpan-2 [revised], at 3-4; Tr. at 9). The Companies stated that borrowings would be made at a monthly interest rate determined by the source of the funds borrowed during the month (Exh. KeySpan-2 [revised], at 4). Funds borrowed from external sources will bear interest at the rate charged to KeySpan by the lender (id.). Borrowings from the cash surplus of the pool participants will bear interest at the rate of high grade, 30-day commercial paper of major corporations sold through dealers, as quoted in the Wall Street Journal (id.; Tr. at 10-11). Surplus funds loaned to the money pool will earn interest at the same commercial paper rate (Exh. KeySpan-2 [revised], at 4). The pool participants will reimburse KeySpan Corporation for their proportional share of the administrative costs incurred to meet the short-term borrowing requirements of the money pool, based on the Securities and Exchange Commission's authorized borrowing limit of each pool participant (id.; Exh. DTE 1-2; Tr. at 16-17).

The Companies stated that the Money Pool Agreement will provide them with greater financing flexibility and a lower cost of borrowing that would otherwise be available to them (Exh. KeySpan-2 [revised], at 4). By way of example, the Companies maintain that if the Money Pool Agreement had been in place during the twelve months ending September 30, 1999, benefits to Massachusetts ratepayers derived from lower interest cost on fuel inventory borrowings would have been $87,423 (Exh. KeySpan-2, exh. B; Tr. at 14). The financial officers of the Companies will receive periodic reports on the performance of the money pool and have continuing oversight of its administration (Exh. DTE 1-6). The Companies may withdraw from the money pool at any time (id.).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 164, § 17A, a gas or electric company must obtain written Department approval in order to "loan its funds to, guarantee or endorse the indebtedness of, or invest its funds in the stock, bonds, certificates of participation or other securities of, any corporation, association or trust . . . ." The Department has indicated that such proposals must be "consistent with the public interest," that is, a § 17A proposal will be approved if the public interest is at least as well served by approval of the proposal as by its denial. Bay State Gas Company, D.P.U. 91-165, at 7 (1992); see Boston Edison Company, D.P.U. 850 (1983).

The Department has stated that it will interpret the facts of each § 17A case on its own merits to make a determination that the proposal is consistent with the public interest. D.P.U. 91-165, at 7. The Department will base its determination on the totality of what can be achieved rather than a determination of any single gain that could be derived from the proposed transactions. Id.; see D.P.U. 850, at 7. The Department also found that the consistency standard best accommodates the Department's interest in protecting the utility's ratepayers from the adverse effects of unwarranted § 17A transactions and a utility's interest in having flexibilty in a changing marketplace to meet long term objectives of its ratepayers and shareholders. D.P.U. 91-165, at 7; Boston Edison Company, D.P.U. 91-17, at 6 (1997).

Thus, the Department's analysis must consider the overall anticipated effect on ratepayers of the potential harms and benefits of the proposal. D.P.U. 91-165, at 8. The effect on ratepayers may include consideration of a number of factors, including, but not limited to: the nature and complexity of the proposal; the relationship of the parties involved in the underlying transaction; the use of funds associated with the proposal; the risks and uncertainties associated with the proposal; the extent of regulatory oversight on the parties involved in the underlying transaction; and the existence of safeguards to ensure the financial stability of the utility. Id.

IV. ANALYSIS AND FINDINGS

The Department notes that the features of the Money Pool Agreement are similar to those found in previously approved financial arrangements of this nature. See Massachusetts-American Water Company/The Salisbury Water Supply Company, D.T.E. 00-43, at 6 (2000); Bay State Gas Company, D.P.U. 96-69, at 4 (1996); Massachusetts Electric Company, D.P.U. 91-133 (1992). Under the Money Pool Agreement, the Companies would replace their individual lines of credits or issuance of commercial paper by using excess funds from the money pool (Tr. at 10-11). To the extent that excess funds are not sufficient to cover the Companies short term borrowing needs, the Companies will benefit from KeySpan Corporation's ability to issue commercial paper at lower rates by virtue of its solid financial standing and larger presence in the capital markets (Tr. at 20-25). In addition, by consolidating individual issuances of commercial paper under a single issuer, participants stand to benefit from lower administrative and legal costs (Tr. at 31-33). The Money Pool Agreement will enable the Companies to share the expenses that it currently pays to rating agencies and banks, and to loan excess funds to the pool at an interest rate that on average exceeds the rate achieved from money market mutual fund investments (Tr. at 10-11, 25-26).

The evidence indicates that the Companies would have derived savings of $87,423 through lower interest costs on fuel inventory borrowing had the Money Pool Agreement been in effect during the twelve month period ending September 30, 2000 (Exh. KeySpan-2, exh. B). Furthermore, the financial officers of the Companies will receive periodic reports regarding the operation of the money pool and will have continuing oversight of the money pool, and any of the participating Companies may withdraw from the Money Pool Agreement at any time (Exh. DTE 1-6; Tr. at 27). Therefore, the reporting and termination features of the Money Pool Agreement provide adequate protection to ratepayers against potential harm.

For the reasons stated above, the Department finds that the public interest is as least as well served by approval of the Money Pool Agreement as by its denial. Therefore, the Department finds that the Money Pool Agreement is consistent with the public interest. However, the Department also finds that the public interest requires that any further change in the Money Pool Agreement be approved by the Department before the change becomes effective and that the Companies be required to file a report after one year which clearly summarizes the first year of operation. See D.P.U. 96-69 at 4; D.P.U. 91-133, at 4; New England Power Company/Massachusetts Electric Company, D.P.U. 589, at 4-5 (1981).

The Department has promulgated final rules establishing Standards of Conduct for local distribution companies and affiliates. Standards of Conduct Rulemaking, D.P.U. 97-96 (1998); 220 C.M.R. §§ 12.00 et. seq. The Department recognizes that KeySpan Corporation's participating subsidiaries are primarily regulated utilities. However, should a party to the Money Pool Agreement initiate efforts to participate in unregulated activities in the future, or if a new participant seeks to join the Money Pool Agreement, appropriate changes to the Money Pool Agreement may be necessary and may require Department approval.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the Department hereby approves, in accordance with the provisions of G.L. c. 164, § 17A, the participation of Boston Gas Company, Colonial Gas Company and Essex Gas Company d/b/a KeySpan Energy Delivery New England in a Money Pool Agreement with their affiliates KeySpan Corporation, KeySpan Corporate Services, LLC, The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, KeySpan Generation, LLC, and EnergyNorth Natural Gas, Inc.; and it is

FURTHER ORDERED: That any amendment or any other change in the Money Pool Agreement or terms of its operation shall be approved by the Department before it becomes effective; and it is

FURTHER ORDERED: That Boston Gas Company, Colonial Gas Company and Essex Gas Company d/b/a KeySpan Energy Delivery New England shall submit a filing to the Department at the end of one year which clearly summarizes the first year of operation in order for the Department to determine that the Money Pool Agreement is still consistent with the public interest.

By Order of the Department,

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James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

1. Brooklyn Union and KeySpan Gas are natural gas utilities serving the metropolitan New York area and Long Island respectively (Exh. KeySpan-1, at 1). KeySpan Generation sells electricity and generating capacity at wholesale to a New York state agency that resells to consumers (id. at 1-2). Brooklyn Union, KeySpan Gas and KeySpan Generation are subject to the jurisdiction of the New York State Public Service Commission (id. at 2). EnergyNorth is a natural gas utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (id.).

2. The Companies and Energy North are operating through a d/b/a arrangement as KeySpan Energy Delivery New England (Tr. at 12).